

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

6 ePLUS, INC. : Civil Action No.
7 vs. : 3:09CV620
8 LAWSON SOFTWARE, INC. : January 13, 2011

COMPLETE TRANSCRIPT OF THE JURY TRIAL

BEFORE THE HONORABLE ROBERT E. PAYNE

UNITED STATES DISTRICT JUDGE, AND A JURY

APPEARANCES:

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PROCEDINGS

THE CLERK: Civil action number 3:09CV620, ePlus,
Incorporated, versus Lawson Software, Incorporated. Mr. Scott
L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and
Mr. Michael G. Strapp represent the plaintiff.

Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms.
Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent
the defendant. Are counsel ready to proceed?

MR. ROBERTSON: Plaintiff is, Your Honor. Thank you.

MR. McDONALD: Yes, Your Honor. Thank you.

THE COURT: Do you need to see me about something before the jury comes in?

MR. ROBERTSON: Yes, Your Honor. You had asked us to take a look at those appendices with respect to our motion on this implementation on a customer-by-customer basis.

THE COURT: Yeah.

MR. ROBERTSON: We have done that, and the reason I raised it, Your Honor, is one of the witnesses that's going to be called this morning is Ms. Hannah Raleigh. You may recall she testified once already. She is involved with Lawson Professional Services that has to do -- that has responsibility for implementation of the Lawson software products, and we're concerned that she's going to be getting into areas in and presenting testimony that Lawson is going to contend are

1 defenses to infringement later that are directly implicated by
2 that interrogatory number 24.

3 What I have provided Your Honor with is the
4 appendices that were referenced in the answers to the
5 interrogatories, the transcript from the March 26th hearing,
6 telephonic hearing on the motion to compel, and the relevant
7 citations to the transcript where this issue came up, and I do
8 want to continue to press the motion, Your Honor.

9 We do think that the answers, even with the
10 appendices, were nowhere near what was called for and what Your
11 Honor directed Lawson to do in response to that.

12 If I might just, Your Honor, you may recall that
13 these appendices that are being referenced were provided to
14 ePlus three months before the motion to compel was presented,
15 and the appendices do not respond to the interrogatory as
16 represented by counsel for Lawson.

17 Indeed, if you look at some of the appendices, for
18 example --

19 THE COURT: Is A appendix A?

20 MR. ROBERTSON: Yes, sir. Under the tab December 23,
21 2009, response to interrogatory number -- yeah, A is one.

22 THE COURT: March 26th is the first tab, the
23 transcript, and then there's an A behind that. Is that
24 appendix A or not?

25 MR. ROBERTSON: I believe appendix A, Your Honor, is

1 under the tab that is the December 23, 2009, response to
2 interrogatory 24. That's appendix A. It's a SKU list.

3 THE COURT: All right.

4 MR. ROBERTSON: And appendix B, you'll see, is
5 license revenues. I'm assuming that the codes here, for
6 example, IC, PO, RQ stand for, for example, inventory control,
7 requisitions --

8 THE COURT: Right, but that doesn't list the
9 customer.

10 MR. ROBERTSON: Not to my mind, Your Honor. Then
11 there's a tab C which, again, has to do with maintenance
12 revenues, and then there's a tab --

13 THE COURT: Wait a minute. Let me look at
14 maintenance revenues. What does it say? How do you read the
15 thing?

16 MR. ROBERTSON: Again, it has these codes. Some I
17 think I can identify. Like LSF we know is Lawson system
18 foundation, RQ, requisitions, but the point --

19 THE COURT: What does it mean? This appendix doesn't
20 tell me anything. You all know about them. You have to
21 understand something, gentlemen, ladies. When you are dealing
22 with something that you are intimately familiar with and that
23 other people are not, you have an obligation to stop for a
24 moment and tell them what it is they are looking at.

25 Now, what does this table -- this appendix C, it's

1 very small, it's hard to read. I don't have my magnifying
2 glass up here, so what does it say? It says row, labels. What
3 does that mean?

4 MR. ROBERTSON: Your Honor, it was a mystery to us as
5 well.

6 THE COURT: It was a mystery when you got it, but you
7 spent much time and much money figuring it out, so what does it
8 mean?

9 MR. ROBERTSON: To me it means --

10 THE COURT: What did they tell you it meant?

11 MR. ROBERTSON: They didn't tell us what it meant,
12 Your Honor.

13 THE COURT: Did you ask them?

14 MR. ROBERTSON: We asked them to respond to the
15 interrogatory.

16 THE COURT: Did you ever pick up the phone and say --
17 the common thing to do -- what is this table?

18 MR. ROBERTSON: Yes, we did.

19 THE COURT: And what did they tell you?

20 MR. ROBERTSON: They told us it was revenues
21 associated with licensing, maintenance, and servicing for
22 various customers. The point of the motion to compel, Your
23 Honor, was they had a defense, and it's still a defense, that
24 they say, and I think you are going to hear from the witness,
25 that sometimes, not always but sometimes we help with the data

1 migration or we load the catalogs, but oftentimes the customers
2 do it themselves.

3 And we said, well, if you sell them all the system
4 and it's capable of doing that, then it infringes. And they
5 said, no, our customers are going to do this. And that was
6 exactly the issue that came up. This is page 17 of the
7 transcript, Your Honor, where I inform the Court that Lawson is
8 contending that we have to prove infringement on a
9 customer-by-customer basis and that the software they have
10 licensed or maintain is actually, quote, implemented.

11 Go down starting at line 19. If that's going to be
12 the basis of their defense, we think that they should provide
13 us with information as to which software modules on a
14 customer-by-customer basis is actually implemented. For
15 example, the defense is -- and you're going hear it because
16 we've seen slides from Dr. Shamos and we've heard testimony
17 from Ms. Raleigh that sometimes we don't load the catalog data,
18 our customers do it.

19 Now, when I raised that with the Court, I mean, the
20 Court said, well -- and this is a quote from the Court:
21 Frankly, I don't understand how that's a defense to
22 infringement. You say you sold Payne something, but Payne
23 didn't use all of it. If you sold it to me, that's
24 infringement it seems to me. So I really understand the issue,
25 but you all know enough and you can use the dictionary to get

1 your definitions.

2 Answer: And the fact is, all we got after that was
3 36 customers out of hundreds of customers in which they said,
4 here, here's a few customers that we've done data migration
5 for --

6 THE COURT: What are you doing?

7 MR. McDONALD: I was going to offer something, Your
8 Honor, because I think we may not have a dispute on this issue,
9 and we can maybe cut it short.

10 THE COURT: Let's see if we can speed it up.

11 MR. McDONALD: Since damages are out of the case, I
12 don't think we're going to dispute now -- we don't have to
13 worry about how many customers or whether there was some that
14 we didn't help load the data. I don't think this is an issue.

15 THE COURT: You're not going to offer evidence on
16 that topic.

17 MR. McDONALD: No, it's not a defense that we're
18 asserting.

19 THE COURT: Then it's moot.

20 MR. ROBERTSON: All right, thank you, Your Honor.
21 That's a good resolution.

22 THE COURT: Do you know how that could have been
23 solved, Mr. Robertson? Let me tell you the way that we did it
24 in the days gone by. The issue was on the table -- Mr.
25 McDonald, this is for both of you.

1 You get up, you pick up the phone, you say, Scott, or
2 Mr. Robertson if you don't call each other by the first name,
3 that motion is no problem anymore because we're not offering a
4 defense on that.

5 Then they don't spend the time putting this together,
6 and I don't spend 20 minutes sitting here listening to whatever
7 it was -- it wasn't 20 -- and that's the way it's done.

8 Now, whatever happened to the notion of just doing
9 things that way? And both of you are equally at fault for
10 letting that ball drop. That's the way you practice law.
11 That's one of the reasons or one of the ways law can be a
12 profession that allows you to focus on what you really need to
13 focus on and not fight all the time. All right, would you take
14 this. Are we ready for the jury?

15 MR. McDONALD: Yes, we are.

16 THE COURT: All right. I don't like addressing
17 topics like that because to some extent it makes one sound like
18 Rodney King, but the fact of the matter is, this is still a
19 profession, and you better start acting like it as long as you
20 are here. That's the way it's done here. That's the way it's
21 going to be done here.

23 (Jury in.)

25 THE COURT: All right, Ms. Stoll-DeBell, who is your

1 next witness?

2 MS. STOLL-DeBELL: Mr. Christopherson.

3

4 **DALE CHRISTOPHERSON,**

5 a witness, called by the defendant, having been first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. STOLL-DeBELL:

9 Q Good morning, Mr. Christopherson.

10 A Good morning.

11 Q Welcome back.

12 A Thank you.

13 Q I'm going to ask you a few questions about your education
14 and work experience before we get into some of the more
15 substantive questions.

16 A Okay.

17 Q Where did you go to high school?

18 A I went to high school Cambridge Public School, and that's
19 in Minnesota.

20 Q When did you graduate?

21 A Back in 1977.

22 Q What did you do after you graduated from high school?

23 A I joined the military.

24 Q What branch of the military?

25 A U.S. Army.

Christopherson - Direct

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1 Q What kind of work did you do in the U.S. Army?

2 A Worked as an intelligence analyst.

3 Q Can you tell us a little bit about that.

4 A A little bit about that.

5 Q A little bit. Not a lot.

6 THE COURT: If he did, he'd have to -- let's get on
7 with it.

8 A Basically worked for 12 years in the military as an
9 intelligence analyst. A good bit of that was actually
10 instructing the profession of intelligence analysts to both
11 noncommissioned and commissioned officers, but I also had the
12 opportunity to actually perform that job.

13 One of the places I performed my job was at headquarters
14 U.S. European Command, and there I worked at the command
15 center. Command center, probably the best way, most people in
16 the court were around during the first Iraq war. We'd see
17 General Schwarzkopf every night on the news, and that was in
18 the command center. That's where I worked, except it wasn't a
19 tactical situation. It was peacetime. So not the same energy
20 necessarily.

21 Q How long were you in the Army?

22 A 12 years.

23 Q Do you have a college agree?

24 A Yes. Actually I have two, an associate's and a bachelor's
25 degree.

Christopherson - Direct

1501

1 Q What kind of associates degree do you have?

2 A I got that in general studies, and I did that while I was
3 in the military.

4 Q What kind of bachelor's degree do you have?

5 A Management information systems.

6 Q What is management information systems?

7 A It's -- partly you look at project management or program
8 management directly related to the computer science field, and
9 then also, about 50 percent of the programmers, we'll be
10 looking at computer programming also. So I did a fair bit of
11 computer programming.

12 Q So sort of a combination of computer programming and
13 management?

14 A Absolutely.

15 Q Other than your bachelor's degree in management
16 information systems, will you describe for us other types of
17 experience you have relating to computer software?

18 A Sure. Actually, I started programming back when I was in
19 10th grade which brings us back to 1974, but I'll jump quickly
20 forward.

21 When I was working in the intelligence field, many times I
22 was called to work as basically a business analyst to design
23 artificial intelligence systems and get those deployed out in
24 the field along with training systems.

25 Q Have you ever written software?

Christopherson - Direct

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1 A Absolutely, I have. I wrote some software while I was in
2 the military, not a lot, but I really, really enjoyed it, and
3 that's where I saw my career eventually going, and I had the
4 opportunity to get out of the military and join a defense
5 contractor really where I was able to still continue my
6 intelligence analyst work but also move into computer
7 programming.

8 So I felt it was an excellent opportunity for me to start
9 a new career path and, again, still retain the old career path
10 that I had, and then I started writing programs for Department
11 of Defense back in 19789.

12 Q Have you ever been an instructor for computer software
13 projects?

14 A Yes, I was. I took quite a few courses in both COBOL,
15 Basic, introduction to computers, C, C++, and that would have
16 all been at what's now called Strayer University but back then
17 when I was doing that was Strayer College. It was up near D.C.

18 Q Maybe slow down a little bit and that will be helpful.
19 Me, too. I'll try to slow drown. So overall, how many years
20 have you been working in the software development management
21 and director areas?

22 A Can you say that question again?

23 Q Sure. How many years have you been working in the
24 software development, management, and director areas?

25 A Clearly over 30 years.

Christopherson - Direct

1503

1 Q And how many years have you been working with procurement
2 software?

3 A Started working with procurement software back in 2001.

4 Q When did you start working for Lawson?

5 A 1997.

6 Q What is your current position with Lawson?

7 A Director of development for S3 applications.

8 Q What are all the supply chain products for which you have
9 development responsibilities?

10 A I may forget one or two, but clearly inventory control,
11 purchase order, requisitions, EDI, fax integrator, procurement
12 punchout, requisition self-service, or what we called RSS,
13 warehouse, order entry, vendor self-service, and then customer
14 self-service.

15 Q Do you have development responsibility for products other
16 than the supply chain products that we just mentioned?

17 A Yes, I do.

18 Q Briefly describe what those are.

19 A Sure. Within the financial suite, I've got general
20 ledger, accounts payable, accounts receivable, invoice
21 matching, or what we call matching typically. Quite a few
22 others in that area, grant management being one.

23 In the HR area, I've got HR, benefits, payroll, taxes,
24 teacher contract administration, employee manager self-service,
25 and in smart reconciliation which is used to take a look at

Christopherson - Direct

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1 invoices from both inventory control and matching, what did we
2 order through purchase order, the requisitions, and then what
3 did we actually receive. So going back also in the area of
4 supply chain management receiving applications also.

5 Q How many people directly report to you?

6 A Directly report to me, just under 40. I think it's about
7 38 right now.

8 Q What are their functional responsibilities?

9 A I've got business analysts, software developers, and also
10 then quality control or tester, testing people.

11 Q How many people indirectly report to you?

12 A About another 60 people that I have that are all based in
13 our operations that I set up in Manilla.

14 Q Do you have exposure to Lawson's customers?

15 A On a daily basis.

16 Q Can you describe at a high level how that happens?

17 A Sure. It can happen in a variety of ways. One, quite
18 often I'm invited to go out to our user events as Mr. Lawson
19 talked about yesterday. We have regional ones or local ones.
20 There's one based in Minneapolis, so that one I get invited to
21 all the time that seems like, and that's once a quarter
22 practically.

23 Then there's a global one or the national one. That
24 happens once, usually in the spring. Sometimes I'm invited to
25 that one. Sometimes I may be busy on something else, so I may

Christopherson - Direct

1505

1 choose not to go to that one.

2 Q Other than the user conferences, what other kind of
3 customer interactions do you have?

4 A So then we get to actually supporting the applications.

5 We talked a little bit about maintenance. Maintenance, you get
6 these customers who maybe run into an issue with their
7 software. Maybe they run into an actual defect or what some
8 people may call bug. That goes to our support organization.
9 They talk to the customer, find out what the issue is, comes
10 into my organization, we fix the issue.

11 Sometimes we actually don't understand what the issue is.
12 Even though the support person has gotten all kinds of good
13 notes, I have to actually get on the phone, pick up the phone
14 and talk to the person on the other end that reported this
15 issue and find out what goes on.

16 I'm not too terribly involved unless there's an escalation
17 of those problems. I got engineers that handle that, but what
18 I what get into a lot is really called trusted advisor roles
19 where I've got customers who are trying something different to
20 use their software, they're not quite sure how maybe they
21 should best implement it within their system, and they have had
22 they system for awhile. It's already past services. Services
23 is no longer engaged.

24 They'll talk to someone such as me that they've built a
25 really trusted relationship and say, Dale, what do you think,

Christopherson - Direct

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1 should I try this, should I not try this, I'm having some
2 issues here, can you help us out, and we'll take a look at
3 that. Those are always phone calls or site visits, sometimes
4 they come up and see us.

5 Q I'm going to ask you a couple of questions about Lawson
6 generally.

7 A Sure.

8 Q What kinds of products does Lawson sell?

9 A Software and then services to help service that software
10 and then clearly the maintenance.

11 Q Does Lawson sell computer systems?

12 A No, it does not.

13 Q Does Lawson sell any kind of computer hardware?

14 A No, it does not.

15 Q I'm going to ask you a few questions about Lawson system
16 foundation.

17 A Sure.

18 Q At a high level, what is LSF?

19 A Lawson system foundation, it is a basis for the 4GL,
20 Lawson 4GL applications such as purchase order, requisitions or
21 RQ, and inventory control. They need that in order to operate,
22 but not only do they need it to operate it, they need it in
23 order to actually be compiled.

24 The programming language by itself my developers actually
25 work in is an extension of COBOL but doesn't always necessarily

Christopherson - Direct

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1 look like COBOL. The program files, when you look at it, is
2 completely dispersed through a variety of things, and LSF pulls
3 it all together into an actual COBOL program. We don't
4 actually see that. That's a machine that does that.

5 Q Other than -- are Lawson software modules other than the
6 accused products in this case also hosted on top of LSF?

7 A That is correct.

8 Q Can you give me a few examples of modules that are hosted
9 on LSF other than the accused products in this case?

10 A When I talked about the financial suite and the HR suite
11 --

12 THE COURT: Why are we getting into this? It's hard
13 enough to follow this technical material without getting into
14 something that isn't an issue. Let's just stay with what's at
15 issue and get right to the point, okay? That doesn't make any
16 difference what else is hosted.

17 MS. STOLL-DeBELL: Well, I think it goes to the fact
18 that LSF -- what are the accused products and that LSF works
19 with things other than.

20 MR. ROBERTSON: I'll stipulate that LSF works with
21 the other products as long as you stipulate it works with the
22 accused products.

23 MS. STOLL-DeBELL: I think we do.

24 THE COURT: Do you or not?

25 MS. STOLL-DeBELL: We do.

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1 THE COURT: Okay, done. Now we don't need to talk
2 about anything else. Stay with the accused products.

3 Q I'm going to ask you, or I'm going to turn now to the item
4 master database --

5 A Sure.

6 Q -- and ask you some questions about that.

7 A Uh-huh.

8 Q When Lawson sells its software to its customers, is there
9 any item data in the item master database?

10 A No, there's not.

11 Q Why does Lawson sell it that way, with no item data in it?

12 A Essentially we don't know what the customers are going to
13 want to have in the database. It's configurable in a variety
14 of ways.

15 THE COURT: Essentially, you don't know; that's the
16 answer. Keep the question and the answer -- and the best way
17 to keep an examination moving is for you to take control of the
18 questions and not be -- we don't need a general dissertation of
19 things. We need to have the questions asked and answered.

20 Q Would item master work if it included only items from a
21 single vendor?

22 A Yes.

23 Q Would item master work if it included only items that were
24 already owned by the customer?

25 A Yes.

Christopherson - Direct

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1 Q Can item master be stored in a local database at the
2 customer's location?

3 A Yes, it may.

4 Q Can item master include item records for items owned by
5 the customer?

6 A Yes.

7 Q Can item master records include a customer's part number?

8 A Yes, it can.

9 Q Can item master records include the manufacturer or
10 supplier's catalog or part number?

11 A Yes.

12 Q Do item master records include a default unit of measure?

13 A Yes, it does.

14 Q Do item master records include an item description?

15 A Yes, it does.

16 Q Do item master records include the quantity of items
17 available in the customer-owned inventory?

18 A For stock items, yes.

19 Q Do item master records include price?

20 A Yes.

21 MS. STOLL-DeBELL: If we can go to PX-361.

22 MR. ROBERTSON: Your Honor, I'm going to object.

23 This is a demonstrative that Dr. Weaver did that was never
24 introduced. This witness -- so it's not in evidence.

25 THE COURT: Could I see it?

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1 MR. ROBERTSON: Excuse me, sir?

2 THE COURT: Could I see it? It's always helpful to
3 know what you all are talking about.

4 THE CLERK: PX-361; is that correct?

5 THE COURT: It was never was introduced. Mr. Neal,
6 you don't have it.

7 MR. ROBERTSON: Your Honor, while we're waiting -- if
8 you want to wait for the exhibit, I'll wait.

9 MS. STOLL-DeBELL: Your Honor, I'm focusing on the
10 page --

11 THE COURT: Just a minute. Excuse me. I just need
12 to get there. What is this, Ms. Stoll-DeBell?

13 MS. STOLL-DeBELL: This is one of the screen shots
14 from one of the demonstrative demos that Dr. Weaver ran.

15 THE COURT: But he didn't run it in the testimony, or
16 he did here?

17 MS. STOLL-DeBELL: He did not run it at trial, but it
18 was part of his expert report, and I'm not actually going to go
19 through the demo. I'm more going to ask one question about one
20 screen shot.

21 THE COURT: Which page?

22 MS. STOLL-DeBELL: It ends in 2233.

23 THE COURT: You all have a real knack of printing
24 things in such small dimensions nobody can see them. Will you
25 go look in my desk, maybe it's on the desk, there's a little

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1 magnifying glass about that big.

2 What is the purpose of this?

3 MS. STOLL-DeBELL: Your Honor, it's relevant to
4 explain what item master is in the database which goes to --

5 THE COURT: You are offering it to show what item
6 master is.

7 MS. STOLL-DeBELL: What it looks like, yes.

8 THE COURT: So, now, Mr. Robertson, what is your
9 objection to it?

10 MR. ROBERTSON: This was never introduced into
11 evidence by Dr. Weaver. I think it's inappropriate for a lay
12 witness to sit and comment now on an expert's exhibits or
13 expert's report.

14 We didn't get any expert report from Mr.
15 Christopherson saying that he was going to be analyzing Dr.
16 Weaver's expert report or Dr. Weaver's exhibits relating to his
17 expert report, so I just think it's inappropriate expert
18 testimony from a lay witness commenting on an exhibit that was
19 never in evidence or that Dr. Weaver didn't present.

20 MS. STOLL-DeBELL: Your Honor, this is just a screen
21 shot from Lawson's software, the laptop demo that we produced
22 in discovery. Mr. Christopherson works with these products
23 every day as he testified about, and I'm asking ask him to
24 explain what the screen shot shows.

25 MR. ROBERTSON: As Your Honor knows, we asked Lawson

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1 to produce to us any demonstrations they were going to rely
2 on --

3 THE COURT: This isn't a demonstration.

4 MR. ROBERTSON: This is our screen shot of what was a
5 demonstration, Your Honor. You will recall the demonstrations
6 were produced both on a laptop captured by a software so we can
7 present it like a video, and then we also captured hard copies
8 of the screen shots for each web page or page that was
9 presented.

10 THE COURT: Do you agree or disagree that this is a
11 screen shot of a Lawson item master?

12 MR. ROBERTSON: I would agree that page 233 is a
13 screen shot from the Lawson system.

14 THE COURT: All right.

15 MS. STOLL-DeBELL: I was going to point out, the
16 Lawson laptop is actually an exhibit that has been admitted
17 into evidence as well, but it seemed to be easier just to put
18 the screen shot --

19 THE COURT: Excuse me. The exhibit as been admitted?

20 MS. STOLL-DeBELL: The laptop is an exhibit in this
21 case.

22 THE COURT: This is just a page of that exhibit?

23 MS. STOLL-DeBELL: Yeah. We could put it up, and put
24 on the screen shot from the actual laptop. It's already been
25 printed here. I'm only going to ask questions about this one

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1 page from this exhibit.

2 MR. ROBERTSON: The laptop is not in evidence, Your
3 Honor.

4 MR. CARR: Yes, it is.

5 THE COURT: Wait just a minute. It either is or it
6 isn't.

7 MR. ROBERTSON: I didn't introduce it during my case.

8 MR. McDONALD: I believe that is a stipulated
9 exhibit, though, isn't it?

10 MS. STOLL-DeBELL: It was, Your Honor. We have
11 both -- we made two laptops that are identical. We kept one,
12 and we gave one to ePlus, and both of those are actual
13 stipulated exhibits in this case.

14 MR. ROBERTSON: Your Honor, remember, we had a motion
15 that Lawson never provided us with any demonstrations, and so
16 the laptop can come in. Your Honor's already ruled on the fact
17 that as to these demonstrations, that can't be performed.

18 THE COURT: My question is, is this from that laptop?

19 MS. STOLL-DeBELL: Yes, it is.

20 MR. ROBERTSON: It's from a demonstration that Dr.
21 Weaver did using that laptop.

22 THE COURT: So it's not from the laptop?

23 MR. ROBERTSON: Well, he uses the software on the
24 laptop in order to be able --

25 THE COURT: I know, but it's not what appears now on

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1 the laptop.

2 MR. ROBERTSON: Nothing appears on the laptop, Your
3 Honor, unless you turn it on and run a program.

4 THE COURT: Even I know that.

5 MR. ROBERTSON: I'm just saying, it's not --

6 THE COURT: Why would you make an argument like that?

7 MR. ROBERTSON: I'm sorry. It's not on the laptop,
8 Your Honor.

9 THE COURT: If it's on the laptop and the laptop is
10 an exhibit, then why can't she put it in?

11 MR. ROBERTSON: It's not on the laptop.

12 THE COURT: Is that because of this argument that the
13 laptop hasn't been turned on?

14 MR. ROBERTSON: No. You'd have to run through the
15 exact same demonstration that Dr. Weaver did to generate these
16 screen shots.

17 THE COURT: It would be using the laptop to make a
18 demonstration to get there.

19 MR. ROBERTSON: Yes, sir. You have to go through all
20 the steps --

21 THE COURT: Objection sustained. I've already ruled
22 on that.

23 MR. ROBERTSON: Your Honor, this is also a stipulated
24 exhibit, 361. It's also a stipulated exhibit.

25 THE COURT: Why are you objecting if it's a

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1 stipulated exhibit?

2 MS. STOLL-DeBELL: I'm not --

3 THE COURT: I'm talking to Mr. Robertson.

4 MR. ROBERTSON: Your Honor, this was Dr. Weaver's
5 exhibit. I don't know how this witness, a lay witness --

6 THE COURT: But the pretrial order says the exhibits
7 are in unless they are objected to, and if you stipulated that
8 it's in, it's in, and she can use it. There may be an
9 objection as to the question, but she can certainly use the
10 exhibit --

11 MR. ROBERTSON: Well, actually, they were in, Your
12 Honor, less they were objected to, and I'm objecting to using
13 this document with this witness.

14 MS. STOLL-DeBELL: Your Honor, it's plaintiff's
15 exhibit. We went through the pretrial order, and we both
16 agreed to have it entered into evidence, and now I'm using it.

17 THE COURT: I think that you didn't read the pretrial
18 order. The exhibits are in at the pretrial conference unless
19 they are objected to. They weren't objected to. They were
20 stipulated, I'm told. I don't know whether that's true, but
21 your objection after the fact doesn't deal -- doesn't then
22 resurrect your right to object at the time it's offered at the
23 pretrial conference. That's why I do the pretrial conference.

24 MR. ROBERTSON: Your Honor, there were a number of
25 exhibits yesterday with Mr. Farber that were stipulated to that

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1 were objected to when Mr. Farber testified.

2 MS. STOLL-DeBELL: That's not true, Your Honor. They
3 were not stipulated to, and you didn't enter them into
4 evidence. If you recall, you said they needed to lay a
5 foundation for those exhibits.

6 MR. ROBERTSON: It was --

7 THE COURT: You know the first rule of holes? Quit
8 digging. All right, objection overruled.

9 MS. STOLL-DeBELL: Thank you, Your Honor. Bill, if
10 you could put up PX-361 and go to the page that ends in Bates
11 number 2233 for us, please. If you can blow up that screen
12 shot.

13 THE COURT: That's not the page I was looking at.
14 Did I look at the wrong page?

15 MS. STOLL-DeBELL: 2233.

16 THE COURT: I looked at 2223. I don't think for
17 purposes of the ruling it made any difference.

18 Q Can you see that, Mr. Christopherson?

19 THE COURT: Well, okay.

20 MS. STOLL-DeBELL: You also have a copy in your book
21 as well.

22 THE COURT: My concern is the extent to which it
23 animates or affects the ruling I made on the demonstration. Is
24 this the same demonstration -- what is the name of that fellow
25 who was going to introduce it?

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1 MR. ROBERTSON: Mr. Hvass.

2 MS. STOLL-DeBELL: This is Dr. Weaver's
3 demonstration.

4 THE COURT: Yes, but is this what he was going to do?

5 MS. STOLL-DeBELL: Mr. Hvass?

6 THE COURT: Yes. You can't do indirectly what you --

7 MS. STOLL-DeBELL: No, Your Honor. This is Dr.

8 Weaver's, so there's no point to redo exactly what Dr. Weaver
9 did, so, no.

10 THE COURT: But Dr. Weaver had to testify to this.

11 The real objection to this, I guess, is there's no foundation
12 for it, but it's been admitted without objection, so you can
13 use it.

14 MS. STOLL-DeBELL: Thank you.

15 Q Mr. Christopherson, have you seen this screen shot before?

16 A Yes, I have.

17 Q What is it?

18 A In this particular case, it's 25 records of items that are
19 in the item master for a specific location, what they call
20 requesting location.

21 Q I'm going to walk through some of the different things
22 that we can see on this screen shot and ask you to explain to
23 us what they are.

24 A Sure.

25 Q I see a column there that is labeled item.

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1 MS. STOLL-DeBELL: I don't know, Bill, if you can
2 highlight that item column.

3 Q Can you tell us what that is, Mr. Christopherson?

4 A We've been referring to that's kind of the Lawson item
5 number or the customer part number.

6 Q Is that something that -- well, who creates that item
7 number?

8 A The customer does.

9 Q Does it ever come from the vendor?

10 A No, it does not.

11 Q Let's go on to the next column. It has a heading
12 description?

13 A Uh-huh.

14 Q What is that?

15 A That's what we've been referring to as the item
16 description.

17 Q And then what is the column, the next column over? I
18 think it says tracked. Can you explain what that is?

19 A Yes. That has to do with if -- well, in the item master,
20 we have two types of items. We have those that we don't keep
21 in stock, what we call nonstock items. Those are items that
22 when we need them, we always have to go purchase them.

23 Then we have our stock items and whether or not we're
24 tracking the stock of those items, thus tracked, and that has
25 to do with tracking that order and -- not the order, but rather

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1 the inventory and making sure that we're always going to have
2 enough on hand.

3 This particular case, you've got medical instruments. You
4 want to make sure that -- you got someone going into surgery,
5 you've got the equipment, the supplies that you need for that
6 surgery before that surgery actually starts or the medical
7 procedure.

8 Q Where does the tracking information come from?

9 A Tracking information, that's housed within inventory
10 control or IC.

11 Q The screen shot we're looking at here, where did the item
12 description information come from?

13 A The item description can come from the customer.

14 Generally they'll put it in terms that they understand. In
15 particular, a lot of the hospitals will have terms that are
16 very similar between hospitals, between locations.

17 Take nurses today are very short-supplied within the US,
18 and as a result, it's quite often that nurses are having to go
19 from hospital to hospital even in different companies. They'll
20 work different shifts different places. They need to know
21 basically standardized ways of the way things are being
22 identified.

23 Q Is this a typical list of items that you see in an item
24 master database?

25 A For medical unit, yes. This would be some of the items

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1 that you may see.

2 Q What kinds of items do you see here?

3 A Clearly, I've got some, looks like -- it's a little bit
4 fuzzy in mine also, Your Honor, so --

5 MS. STOLL-DeBELL: Bill, could we blow up some of
6 those maybe, blow up that description column or somehow make
7 those bigger and easier to see?

8 Q Is that better?

9 A Sure. It looks like there's some sort of a surgical tape
10 dispenser, different amounts on each one of those, ten or
11 20 yards, some strips. Those are probably Band-Aids, or we
12 might refer to them as Band-Aids, but obviously they don't in
13 this case. Some needles, varying lengths.

14 Q Looks like maybe shoe covers?

15 A Yes, some shoe covers down there, some surgical masks,
16 there's some gloves, there's a gown, there's a scalpel, another
17 type of tape. There's some syringes. So a wide selection of
18 things, some related, some not related. The shunt, probably
19 not related to the shoe covers, for instance.

20 Q Is item master organized by related items?

21 A You know, if you look at this, you've got items numbers
22 going 1,007, -8, -9, -10, -11, -12, and it's -- I haven't
23 looked at them all, but they appear to be almost in
24 alphabetical order. I see now where 1,026 is not there, but as
25 I said --

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1 THE COURT: What was the question?

2 MS. STOLL-DeBELL: The question was, is item master
3 organized by related items.

4 THE COURT: Yes or no?

5 THE WITNESS: No, it's not.

6 Q Are items in item master organized by vendor?

7 A No, they are not.

8 Q Why not?

9 A Vendor doesn't come into the item master or the ITEMMAST
10 table at all.

11 Q Is this customer's item master database ever published by
12 a vendor?

13 A Can you say that again?

14 Q Is a customer's item master database ever published by a
15 vendor?

16 MR. ROBERTSON: Objection, Your Honor, calls for
17 legal conclusion.

18 MS. STOLL-DeBELL: It does not, Your Honor. I'm
19 asking him to use the ordinary meanings of those terms. They
20 are not claim terms. I'm just asking for his understanding
21 based upon his experience working at Lawson and working with
22 these products.

23 MR. ROBERTSON: Your Honor knows that there's a
24 dispute with respect to this, and there's a --

25 THE COURT: Maybe we need to tell the jury what the

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1 ordinary claim term is -- I mean what the ordinary meaning is,
2 and he needs to explain what he understands the ordinary
3 meaning is. Or maybe I need to do it. Are you finished, Mrs.
4 Stoll-DeBell?

5 MS. STOLL-DeBELL: We can ask Mr. Christopher --

6 THE COURT: He doesn't define what the ordinary
7 meaning is, does he? He defines what his meaning is. So I
8 define -- should I go ahead and tell the jury what the ordinary
9 meaning is now if that's what the question is?

10 MS. STOLL-DeBELL: Your Honor, I think it's
11 appropriate to let him answer with his understanding. He works
12 with these products every day. He works with customers. He
13 already laid his foundation for that, and I'm just asking --

14 THE COURT: If he gives the definition of what his
15 understanding is but it's not what the usual meaning is, it's
16 not the same. Then it confuses the jury, doesn't it?

17 MS. STOLL-DeBELL: I think it's up to the jury to
18 decide what the ordinary meaning is, and we've already heard
19 testimony from the witnesses what their understanding of that
20 ordinary meaning is, and now we're going to ask Mr.
21 Christopherson what his understanding is. And I believe it's
22 up to the jury to ultimately decide what that is.

23 THE COURT: Who testified to that?

24 MS. STOLL-DeBELL: Dr. Weaver.

25 THE COURT: No. He didn't testify what published by

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1 a vendor meant.

2 MS. STOLL-DeBELL: I believe he did, Your Honor.

3 THE COURT: He was asked a different question. I'm
4 going to tell the jury what the definition is. That's enough.

5 Published by a vendor is used in the definition of the claim
6 term catalog, product catalog. Published simply means to make
7 generally known. Published by a vendor simply means that at
8 some point in time, a vendor, such as a supplier, a
9 manufacturer, a distributor has made generally known or has
10 disclosed an organized collection of items or associated
11 information, preferably but not necessarily including a part
12 number, price, catalog number, vendor name, vendor ID, textual
13 description of the item and images relating to the item.

14 That's what the general meaning of the term is. I'll have that
15 in writing for you.

16 Q Okay, Mr. Christopherson, using that definition of
17 published by a vendor, I'm going to ask my question again and
18 ask that you answer it using that definition.

19 THE COURT: You are going to ask him for his opinion;
20 is that what you are doing?

21 MS. STOLL-DeBELL: I don't think it's an opinion, but
22 if it is, it's a lay opinion based upon his experience and what
23 he's seen and what he does in his job.

24 MR. ROBERTSON: Your Honor, I think it's still
25 calling for a legal conclusion from a lay witness, so I would

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1 object on that. This gentlemen's supplied no report, no
2 Rule 26 disclosure. I think it's inappropriate.

3 THE COURT: Well, it is his opinion, I think; isn't
4 it?

5 MS. STOLL-DeBELL: I think it's a fact.

6 THE COURT: It can't be a fact. It's his opinion as
7 to what the facts are; right?

8 MS. STOLL-DeBELL: It's using the definition he --

9 THE COURT: Do you want it in as an opinion, because
10 I'll let it in.

11 MS. STOLL-DeBELL: Yes, then.

12 THE COURT: It's not going to come in just as a fact.
13 It's his opinion.

14 MS. STOLL-DeBELL: Then, yes.

15 THE COURT: There are two kinds of people who can
16 give opinions. One are experts. He's not qualified as an
17 expert, so he's not giving an opinion as an expert.

18 Lay people, such as you and me, can give opinions
19 about matters as well. They can do that if it will help you
20 decide a fact that is in issue or if it will help you
21 understand the evidence and if it is based reasonably on their
22 perception.

23 It is up to you to decide whether, in listening to
24 the testimony, his opinion on this matter is based reasonably
25 on his perception, and if you -- and you can give it such

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1 weight as you choose or none if you choose which is an
2 instruction I'll tell you about later. Do you want to ask him
3 what his opinion is?

4 MS. STOLL-DeBELL: Yes.

5 Q Using the definition the Court just gave for published by
6 a vendor, is the customer's item master database ever published
7 by a vendor?

8 A If you looked at the entire --

9 THE COURT: I think the answer is yes or no to start
10 with, and then if she wants you to explain it, she can, but the
11 jury will understand your opinion better if you preface it by
12 giving them the guidepost from which to make the assessment if
13 there's any further explanation she asks you for. Yes or no?

14 THE WITNESS: No.

15 THE COURT: Do you want to ask him to explain that?

16 MS. STOLL-DeBELL: Yes.

17 Q Please explain your no answer.

18 A Sure. Looking at the screen that we were just talking
19 about, item number, a vendor could not have published that
20 because they never had access to it. That's from the customer.
21 Tracked, that's another one where the vendors would love to
22 have the customers have everything in stock. That comes at a
23 cost to the customer, and they don't want to do that. They may
24 have items that are low turnover, they only use maybe once or
25 twice a year.

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1 There's many other fields that are in the item master.
2 We've talked about some of them. You know, catalog number, the
3 vendor's part number or its number, the manufacturer number,
4 clearly those came from the -- the manufacturer came from the
5 manufacturer, and the vendor number came from the vendor, and
6 those were in their catalogs at some point in time. The
7 description generally --

8 THE COURT: Those did come from a vendor?

9 THE WITNESS: What did come from --

10 THE COURT: Those that you just testified to --

11 THE WITNESS: Did come from the vendor, but --

12 THE COURT: So they were published by a vendor?

13 THE WITNESS: Those particular items, right.

14 THE COURT: Thank you.

15 THE WITNESS: Where I was differentiating, she was
16 saying the item master, that, in itself, all the fields were
17 not, and that's why I was really struggling with the yes or no,
18 Your Honor.

19 THE COURT: I know, but the jury have a right to
20 understand what people's opinions are before they start talking
21 about them.

22 THE WITNESS: I appreciate that.

23 THE COURT: Then they understand what they're being
24 told.

25 Q Do a lot of fields come from the customer in item master?

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1 A Most of the fields.

2 MR. ROBERTSON: Object to the form of the question;
3 vague, ambiguous as to a lot of fields.

4 Q Do most of the fields in item master come from the
5 customer?

6 MR. ROBERTSON: Same objection, Your Honor. I mean,
7 if we want to be specific, there's hundred of fields.

8 Q Mr. Christopherson, are there hundreds of fields in item
9 master?

10 A No, there's not.

11 Q How many fields are in item master?

12 A I don't recall, but there's under 100.

13 THE COURT: So there are a lot, I mean between 0 and
14 100?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Is it closer to a hundred than it is to
17 zero, or close to zero than it is to a hundred?

18 THE WITNESS: It's probably pretty close to 50
19 roughly.

20 THE COURT: So there are 50. You can handle that on
21 cross-examination, Mr. Robertson. Overruled.

22 MR. ROBERTSON: Thank you, Your Honor.

23 Q Would you say a majority of those 50 come from the
24 customer?

25 A I would say from the customer it is clearly a majority.

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1 Q Do Lawson's customers maintain the item master database in
2 private?

3 A Yes.

4 MR. ROBERTSON: Objection, relevancy, Your Honor.

5 MS. STOLL-DeBELL: Your Honor, it goes to --

6 THE COURT: What does that have to do with anything?

7 MS. STOLL-DeBELL: I think it goes to whether it's
8 published by a vendor, whether it meets your definition --

9 THE COURT: No, I don't think so. Objection
10 sustained. Disregard the answer, please.

11 MS. STOLL-DeBELL: Can we go to, Bill, PX-363, and
12 I'm going to want to see page that ends in 942297.

13 MR. ROBERTSON: I'm sorry, Ms. Stoll-DeBell, what
14 page?

15 THE COURT: What exhibit are we on?

16 THE CLERK: 363.

17 MS. STOLL-DeBELL: Actually I need to get you a
18 better page.

19 Q Let's go to the page ending in 942297.

20 THE COURT: 297, the last three digits?

21 MS. STOLL-DeBELL: Yes.

22 Q What is this, Mr. Christopherson?

23 A That is the login screen to get into the Lawson system
24 requiring a user name and a password.

25 Q So when a customer or when anyone wants to use Lawson

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1 software, do they need to have a user name and password?

2 MR. ROBERTSON: Objection, Your Honor, relevancy.

3 MS. STOLL-DeBELL: It goes to his opinion, support
4 for his opinion as to whether item master is -- meets the
5 definition of catalog as defined --

6 THE COURT: I don't understand why, the fact that
7 somebody needs a password to get in and use it.

8 MS. STOLL-DeBELL: I think it goes to whether item
9 master is made generally known or not.

10 THE COURT: The issue is not whether item master is
11 made generally known. It's whether the things that are listed
12 in item master are made generally known, isn't it?

13 MS. STOLL-DeBELL: Well, I think --

14 THE COURT: The issue is what's in the item master,
15 not whether item master is made generally known as I understand
16 the way you all have tried the case, so objection sustained.

17 Q For a user to gain access to see what information is in
18 item master, do they need to use login credentials as shown on
19 this screen?

20 MR. ROBERTSON: Same objection, Your Honor.

21 THE COURT: It may be admissible for a different
22 purpose. Besides that, Dr. Weaver has already testified about
23 putting in the user name that says Lawson, and then he said, we
24 put in our password. So it may be appropriate, but it's not
25 appropriate for -- the previous question wasn't. All right,

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1 overruled.

2 Q Do you need me to ask that again?

3 A Yes, please.

4 Q In order for a user or anyone to gain access and see what
5 information is in the item master database, do they need to
6 enter a user name and password?

7 A Yes, at a minimum.

8 Q Okay, I'm going to change topics slightly,
9 Mr. Christopherson, and I want to talk about how item
10 information is loaded into the customer's Lawson databases.
11 Are there different ways that item information can be loaded
12 into the item master database?

13 A Yes, there are.

14 Q What are those different ways at a high level?

15 A You start with the most basic which would be just key in
16 the items. Someone such as a buyer for an organization working
17 in the purchasing department could just sit in inventory
18 screens and just type in all the required fields. That would
19 be the easiest way, particularly if you are just entering in
20 one or two items.

21 Q So is it safe to call that a manual entry of item
22 information?

23 A Sure.

24 Q Are there tools that Lawson offers that can be used to
25 import information into the database?

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1 A Absolutely. There's a PO 536.

2 Q Are there third-party tools that can used --

3 THE COURT: PO or field?

4 THE WITNESS: PO 536.

5 THE COURT: And that is a what?

6 THE WITNESS: We've referred to it as, I think, about
7 three different ways so far in court, but it's a way to load
8 vendor agreements was one it's been called, a catalog load, I
9 think or something very similar to that.

10 THE COURT: All right.

11 THE WITNESS: Kind of a couple different names.

12 Q Are there third-party party tools that can be used to load
13 item information into the item master database?

14 A Sure. You could use the SQL tools -- structure query
15 language is what SQL stands for -- provided by the database
16 providers, so Oracle or IBM for DB-2, for instance.

17 Q Did you create a demonstrative exhibit that will help
18 explain the process that's used to load item information into
19 the item master database?

20 A Yes, I did.

21 MS. STOLL-DeBELL: Bill, can we put that up, please.

22 MR. ROBERTSON: I'm just going object for the record
23 on this. This is the demonstrative we talked about yesterday.
24 I understand the Court's ruling.

25 THE COURT: Yes, I've already dealt with this out of

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1 court, and the objection has been overruled, and I'm going to
2 allow questioning, but, Mr. Robertson is not going to stand up
3 and object to every question about this particular
4 demonstrative exhibit because it would then interrupt the flow
5 of your hearing and understanding, but his objection is
6 preserved under the terms previously articulated yesterday, Mr.
7 Robertson.

8 MR. ROBERTSON: Thank you, sir.

9 Q Okay, Mr. Christopherson, can you see that?

10 A Yes, I can.

11 Q Does this describe essentially a three-step process for
12 loading item information into the customer's Lawson database?

13 A Yes, it does.

14 Q What is the first step? Does it have a nickname that you
15 use to identify this first step?

16 A Sure. In fact, all three steps, collectively we just call
17 that the ETL process, and that's very standard within the
18 computer industry.

19 Q E stand for?

20 A E stands for extraction.

21 Q What does T stand for?

22 A Transformation or transform.

23 Q And what about L?

24 A Load.

25 Q Let's talk about the extraction step. Where is that shown

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1 on this demonstrative?

2 A Very first step.

3 Q And you can actually maybe even touch it and put a little
4 arrow maybe.

5 THE CLERK: What is the number of this exhibit?

6 THE COURT: It's not. It's a demonstrative.

7 THE CLERK: Thank you.

8 Q Tell us how the extraction step works.

9 A The extraction step, basically that's the vendor. The
10 customer will ask for the items that they want or maybe the
11 entire catalog. That catalog is generally today going to be
12 housed in a database at the vendor's site. Could also be a CD
13 or DVD.

14 They need to get that data from the vendor's system
15 extracted into some form, email message or a flat file -- when
16 I say flat file, I mean CSV file -- and send that over to the
17 customer.

18 Q And then the next step is the transformation step?

19 A Transformation, correct.

20 Q Is that shown in the middle box of this slide?

21 A That's correct. That's this one.

22 Q Looks like there are sort of four sub steps that are a
23 part of that?

24 A Correct.

25 Q Okay. What is the first sub step that is part of the

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1 transformation process?

2 A So you get the file from the vendor, and now you're going
3 to go through and select what do you really want in your item
4 master. Just because you negotiated prices on a hundred items,
5 you may not want actually the hundred loaded. You may only
6 want 80. Maybe it's 99. Maybe it's all 100. Or the vendor
7 sent you the entire catalog, and you may not want to load that
8 entire catalog. You go through and select what you want out of
9 that, identify those that you really want to keep and continue
10 on.

11 Q Do you encourage your customers to select all of the items
12 that a vendor may send as part of the extraction step?

13 MR. ROBERTSON: Objection, lacks foundation.

14 MS. STOLL-DeBELL: It doesn't, Your Honor. I think
15 he already testified at length actually about all of his
16 customer interactions as part of his job.

17 THE COURT: Well, are you asking him has he ever, or
18 are you asking has any of Lawson's sales force ever?

19 MS. STOLL-DeBELL: I'm asking him. Does he encourage
20 customers.

21 THE COURT: And what relevance is that?

22 MS. STOLL-DeBELL: I think he works with Lawson's
23 customers.

24 THE COURT: I know that.

25 MS. STOLL-DeBELL: Okay, and so it goes to whether

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1 the item master database is -- meets the definition of catalog
2 as set forth by the Court.

3 THE COURT: So it's offered -- is what his practice
4 is offered to whether or not Lawson's product meets the
5 definition?

6 MS. STOLL-DeBELL: Yes, and how Lawson talks with its
7 customers and how it instructs its customers to use --

8 THE COURT: He said he hadn't got a foundation. You
9 asked him to testify about his own personal practice, and it's
10 not -- it's of marginal relevance, but it's confusing and
11 leaves open the door to a lot of other responses that will
12 just, that would delay the trial, confuse the jury, and make a
13 difficult situation for the jury already more difficult. So
14 I'm going to sustain the objection for lack of foundation.

15 Q Mr. Christopherson, are you familiar in your job with
16 Lawson's practices and its instructions to its customers on how
17 to load item information into the item master database?

18 MR. ROBERTSON: Objection, Your Honor.

19 THE COURT: The question is -- what is your objection
20 to that question?

21 MR. ROBERTSON: Relevancy.

22 THE COURT: It's what he does. Overruled. She's
23 trying to lay the foundation to which you objected, I think.

24 MS. STOLL-DeBELL: Yes, Your Honor.

25 A Yes, I am.

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1 Q So you are familiar with Lawson's policies?

2 A Correct.

3 Q Is it Lawson's policy to encourage customers to load all
4 of the item information they receive from a vendor into the
5 item master database?

6 MR. ROBERTSON: Objection, relevancy, Your Honor.

7 THE COURT: Overruled.

8 A No, it's not.

9 Q What does Lawson encourage its customers to do?

10 A When a customer comes up with that sort of an idea, myself
11 personally and actually other members of my team, because it's
12 not always me interacting with the customers, but obviously
13 I've got --

14 THE COURT: That disqualifies the answer because he's
15 now -- he was asked, and the answer is nonresponsive. He was
16 asked about whether there's a policy and is there a policy. If
17 he does it, that doesn't make it a policy, and the fact that
18 maybe one or two other people may do it doesn't make it a
19 policy.

20 A policy is something that's adopted by the company,
21 and either they have the policy or they don't have the policy,
22 or -- and then if you've got another issue, you can get into
23 that, but policies -- he's disqualified himself from answering
24 that question with the policy because he said it's based on his
25 practice.

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1 Q Mr. Christopherson, are you aware of the policy that
2 Lawson has regarding selecting item information to load into
3 the item master database?

4 A Yes.

5 Q Can you answer the question about what is that policy?

6 THE COURT: Just what is the policy.

7 A The policy is that we will first ask the customer why do
8 you want to do that. We want to establish what the
9 requirements are. Inevitably what we find out --

10 THE COURT: No. You're going to have to take hold of
11 the examination, because we have -- this kind of testimony,
12 self-starting, rambling testimony creates all kinds of
13 problems, and we're in a question that has been objected to,
14 Mrs. Stoll-DeBell, and he was asked about the policy.

15 He said what the policy was, and then he goes on and
16 gives a lot of other information, and that isn't responsive to
17 the question, and it doesn't give Mr. -- and the reason for all
18 this is that Mr. Robertson, your opponent, has the right to
19 object to a question, and if the witness is self-animating
20 everything, he doesn't have that opportunity and we have to
21 move to strike the testimony, and then we have to ask the jury
22 to do the difficult thing and disregard that which has been
23 said. So let's get hold of it.

24 Now, Mr. Christopherson, listen to the question. You
25 answer the question. Just answer the question. Don't

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1 elaborate on it, and then Ms. Stoll-DeBell, if she wants more
2 information, will ask you another question on that or another
3 topic; okay?

4 THE WITNESS: Yes, sir.

5 Q Is Lawson's policy to instruct its customers to only load
6 the item information for those items that it's going to
7 actually use or purchase?

8 A Yes.

9 Q The second sub step on this demonstrative says, adding
10 additional item information. What additional item information
11 can be added in this step?

12 A The item number that the customer would be using, that's
13 one. Whether or not there's going to be tracking, if there's
14 stock or nonstock items, what its inventory levels might be,
15 additional user fields that exist, UNSPSC codes, other category
16 codes.

17 Q What about, are there classification fields within the
18 item master database?

19 A Correct.

20 Q What classification fields are there?

21 A The classification fields, I'm not sure now which
22 classification fields you are talking about.

23 Q Are there inventory classifications fields?

24 A Yes.

25 Q Are there purchasing classifications fields?

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1 A Correct.

2 Q Are those Lawson-specific fields?

3 A Yes.

4 Q That do not come from a vendor?

5 A Correct, they do not.

6 Q Are there any other Lawson-specific fields that you can
7 think of right now that would be added as part of this step?

8 A There's also some user numerical fields.

9 Q The next sub step says, deletes item information?

10 A Correct.

11 Q What item information is deleted here?

12 A It may be the entire line item meaning I don't want that
13 item at all. It may be, for instance, they may have sent
14 photos. The customer may not want photos loaded into the
15 system. That requires space and band width. They may delete
16 that.

17 Q The last sub step that's listed on this slide is modifies
18 item information. What item information is modified?

19 A Frequently it's the item description.

20 Q And is it modified as you described earlier to get a
21 standardized description name?

22 MR. ROBERTSON: Objection to the characterization of
23 the witness's testimony.

24 THE COURT: I don't think he said that.

25 Q Why is it modified?

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1 A It's modified for usually two purposes. One, if the
2 description is greater than 30 characters, the field only holds
3 30 characters, and you want to have something that reasonably
4 describes the item that your users would know is the item that
5 you are trying to purchase or requisition on.

6 But also what we'll have, as I said earlier, is many of
7 the institutions or the customers will actually come up with
8 standard terminology for the items to help -- they can do
9 searches quicker, and it helps their employees as they move
10 around in the organization.

11 Q What about price, is that a modified information?

12 A The price is typically going to come from --

13 THE COURT: Yes or no?

14 THE WITNESS: It's not modified, no.

15 Q Can it be modified?

16 MR. ROBERTSON: Objection, Your Honor. The witness
17 has answered the question, no, it's not modified. I think it's
18 an improper question.

19 MS. STOLL-DeBELL: I asked can it be.

20 MR. ROBERTSON: What is the relevance then, Your
21 Honor?

22 THE COURT: If it's not ever, whether it can be or
23 not seems to me to be irrelevant. Sustained.

24 Q Mr. Christopherson, is it ever modified?

25 MR. ROBERTSON: Objection, Your Honor.

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1 THE COURT: Wait a minute. I've got to deal with a
2 contempt problem here. I'm in contempt. I forgot to put that
3 thing --

4 MS. STOLL-DeBELL: I thought you were going to say
5 I'm in contempt, Your Honor. I was a little worried there for
6 a minute.

7 THE COURT: All right. Sorry. Nobody can be
8 listening and paying attention to what you're doing while I was
9 in contempt which is why I keep these things out of the
10 courtroom. I'm terribly sorry.

11 Ask your question again. Don't answer, please, sir,
12 because there's obviously going to be an objection. Now with
13 my contempt purged, let's go ahead.

14 MS. STOLL-DeBELL: Let me back up and ask this a
15 different way.

16 THE WITNESS: Sure.

17 Q The price information that is put into the item master
18 database, is that a public list price that the vendor sells the
19 item for?

20 MR. ROBERTSON: Objection, relevancy.

21 MS. STOLL-DeBELL: Your Honor, this goes to, again,
22 whether the information in item master is published by a
23 vendor, whether this price field specifically is generally
24 available or not.

25 THE COURT: How does he know that? That's something

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1 that this record testified -- the testimony on this record is
2 that whatever prices are set are between the vendor and the
3 Lawson customer, and it may be sometimes they are and sometimes
4 they aren't, depending upon what goes on is the testimony. So
5 how can he know that? I don't understand how he can even
6 answer the question because he's got how many, 300, 400
7 customers?

8 MS. STOLL-DeBELL: More than that. May I lay a
9 foundation?

10 THE COURT: More than that, okay, I'm sorry. I
11 didn't mean to diminish the size of the company's business, but
12 how many? Thousands of customers?

13 Q How many customers does Lawson have for these products?
14 A For these specific products, I couldn't give you a firm
15 answer on that.

16 THE COURT: It's so many he doesn't even know, and
17 you are asking him to say what happens in situations -- how do
18 you turn these things off? Consign it to the office, please.
19 Third contempt yields a prison sentence. I am sorry.
20 Sustained.

21 Q After this information is transformed, it looks like the
22 next step says, customer loads new info into the Lawson
23 database?

24 MR. ROBERTSON: Objection. It's leading, Your Honor.

25 THE COURT: She just describing what's on the slide.

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1 She didn't get a question out yet. Okay, now ask the question
2 again.

3 Q Is the last step on this slide to load new information
4 into the Lawson database?

5 A Yes.

6 Q And is the information that is loaded into the Lawson
7 database the information that was just transformed as we talked
8 about earlier?

9 A Yes.

10 Q And it looks like there are three different tables on this
11 demonstrative?

12 A Correct.

13 Q Why are there three separate tables there?

14 A Those are the three tables that data is commonly loaded
15 into. Depending on what else they are adding, it may go into
16 some additional tables.

17 Q So is it fair to say that even after the information is
18 transformed, that it is then divided up and sent to different
19 tables within the Lawson database?

20 A Correct.

21 Q After this information is extracted, transformed, and
22 loaded, is it different than the information that was received
23 from the vendor?

24 MR. ROBERTSON: Objection, Your Honor, relevancy.

25 MS. STOLL-DeBELL: Your Honor, it goes to whether

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1 it's generally known and whether item master --

2 THE COURT: Whether what's generally known?

3 MS. STOLL-DeBELL: The information in item master as
4 it has been loaded in.

5 THE COURT: Whether the contents of item master are
6 generally known doesn't have anything to do with this case.
7 It's whether the information that goes into item master is
8 generally known that we're litigating, I think. Objection
9 sustained. It's confusing in addition to the extent it has
10 marginal relevance.

11 Q We're going to switch topics.

12 A Okay.

13 Q Mr. Christopherson, have you watched the recorded
14 demonstrations that Dr. Weaver did showing the functionality of
15 Lawson's accused software?

16 A Yes.

17 Q Let's pull up PX-363.

18 MR. ROBERTSON: I'm going object to this line of
19 questioning if we're going to be commenting -- we're going to
20 have a witness comment on the demonstrations that an expert has
21 performed. It's inappropriate lay witness testimony.

22 THE COURT: It seems to me like maybe it offends the
23 lay witness provision, depending upon what it is, because the
24 lay witness provision explicitly says that you can't garb lay
25 witness opinion in -- I mean expert opinion in lay witness garb

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1 and get it in that way.

2 Otherwise, if he's testifying on the same subjects as
3 Dr. Weaver was testifying about, then he'd be giving expert
4 testimony, and he does not qualify. He hasn't qualified as an
5 expert or given a report. Why isn't it improper lay testimony?

6 MS. STOLL-DeBELL: Because I'm simply going to ask
7 him questions about what the software does. I am not going to
8 ask him to apply the function of the software to the claims in
9 this case. I am merely going to go in and ask questions about
10 the demonstrations that Dr. Weaver did and how Lawson software
11 works.

12 THE COURT: Using that exhibit.

13 MS. STOLL-DeBELL: Yes.

14 THE COURT: All right.

15 MR. ROBERTSON: I still press the objection, Your
16 Honor, because I think it's improper for this witness to be
17 testifying as to what Dr. Weaver presented as an expert witness
18 in his demonstrative.

19 THE COURT: Why don't we take it question by question
20 and see. Now, before we get too far removed on the previous
21 question, your question -- from the previous question. Your
22 question was, what was his opinion as to whether or not the
23 information, when it got finished with ETL, was different from
24 when it started ETL; is that right?

25 MS. STOLL-DeBELL: Yes.

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1 THE COURT: You can ask him that question. That was
2 an improper ruling on my part. The question is, in your
3 opinion -- you ask the question. You'll do better than I will.

4 MS. STOLL-DeBELL: Maybe.

5 Q After this information is extracted, transformed, and
6 loaded, is it different than the information that was received
7 from the vendor?

8 A Yes.

9 MS. STOLL-DeBELL: We can take that off now.

10 Q If you touch the bottom left of your screen, I think you
11 can get rid of those arrows.

12 Let's pull up PX-363, and I'd like you to go to the page
13 ending in Bates number 2332.

14 THE COURT: Of Exhibit 263?

15 MS. STOLL-DeBELL: It's 363.

16 THE COURT: 363, and the page again?

17 MS. STOLL-DeBELL: Ends in 2332.

18 Q Mr. Christopherson, do you recall watching this video
19 demonstrative that Dr. Weaver put on at trial in this lawsuit?

20 A Yes.

21 Q Do you recall watching the one that we're looking at a
22 screen shot from right here?

23 A Yes, I do.

24 Q Does this screen shot show that Dr. Weaver ran a search in
25 the RSS product using Dell as a keyword?

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1 A Yes.

2 MS. STOLL-DeBELL: And I don't know, Bill. Maybe you
3 could blow up sort of the left-hand side of the screen.

4 Q How many items were returned as search results for this
5 search?

6 A It looks like there's just four, but in actuality, with
7 what you've got on the screen shot, you can't tell, and the
8 reason I say that is we've got a scroll bar on this side, and
9 my mistake for not knowing how to use a touch screen here
10 really well. That scroll bar you notice is not going from top
11 to bottom. There are additional items below this, so that, to
12 me, tells me that there's greater than four.

13 Q But you can see four search results on the screen right
14 now?

15 A Correct.

16 Q Was this a search by vendor name?

17 A No.

18 Q Why not?

19 A Well, two things. First of all, one is that having
20 knowledge of the code, I know that with inside of RSS, you
21 cannot search by vendor name. The actual name -- that actual
22 field in the database. Further, we're searching off keywords,
23 and you can see the keywords on the upper right-hand side of
24 that screen, and you see item, manufacturing item, sales class,
25 and there's a variety of those.

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1 THE COURT: Where are the keywords?

2 THE WITNESS: Keywords, Your Honor --

3 MS. STOLL-DeBELL: We're going to have them
4 highlighted, Your Honor.

5 Q Are those the keywords you were talking about?

6 A Correct. That's some. Notice again there's a scroll bar
7 there, so you would have to go through and look at all of those
8 that are on the scroll bar. So it appears there's maybe a
9 third of those being displayed.

10 Q Are any of those keywords vendor name?

11 A None of them are.

12 Q So, you know if you scroll down, you are not going to see
13 vendor name as one of those keywords?

14 A Yes, absolutely.

15 Q Do you know whether this search found all of the items
16 that are being offered for sale by Dell in this item master
17 database?

18 A Since you cannot search --

19 MR. ROBERTSON: This witness didn't even do this
20 demonstration, so I don't know how he can possibly answer that
21 question.

22 THE COURT: You are getting way off what you said you
23 were going to do and into what he was apprehensive you were
24 going to do, Ms. Stoll-DeBell. I think we --

25 MS. STOLL-DeBELL: May I try and lay a foundation for

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1 this, Your Honor?

2 THE COURT: I really wish you'd just ask him the
3 questions you want to ask him instead of using this other
4 thing, other demonstrative, because it confuses everybody, but
5 keep trying.

6 Q Did you run a search on the demo laptop that has the same
7 database that Dr. Weaver used? Did you run the same search?

8 MR. ROBERTSON: I'm going to object, Your Honor.
9 That wasn't disclosed to us.

10 THE COURT: That's the problem I've been
11 apprehending, is that the real basis of his testimony is an
12 undisclosed demonstration, and he's not going to be allowed to
13 do it. I've ruled on that, and that will not happen. So let's
14 move on, and don't ask questions that are based on that.

15 Q Okay. If you were putting a keyword into the search
16 query, let's say you use a vendor name --

17 THE COURT: Let's just close this exhibit, because
18 we're not going to be talking about this again because it -- to
19 make sure we're not talking about the demonstration. All
20 right. Go ahead and ask the questions without reference to the
21 exhibit. Then you're not talking about search -- I mean a
22 demonstration that he did.

23 He did a demonstration, and you didn't disclose it,
24 and if it comes out in cross-examination, we'll strike his
25 testimony, but there are general areas of information I'm sure

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1 he knows that aren't based on the demonstration.

2 Q Okay, if you were running a search in RSS and you choose a
3 keyword that happens to be a vendor's name, let's say Staples,
4 and you run that search, will you get all of the items that are
5 being sold by Staples in that database as search results?

6 A No.

7 Q Why not?

8 A Staples is the vendor name. That was key, what you said,
9 and there's a specific field that has to hold the vendor name.
10 That's called vendor name. All these modules are linked
11 together. The data flows from --

12 THE COURT: I think you've answered the question.

13 THE WITNESS: Okay, thank you, Your Honor.

14 Q Now, is it possible to set up a user -- first of all, what
15 are user-defined fields?

16 A Exactly what they are, user-defined fields. The user is
17 allowed to define the use of what they want for those.

18 Q If a user was to decide that they want to use a
19 user-defined field as vendor name, would that function the same
20 way as if Lawson had set up a vendor name field?

21 MR. ROBERTSON: I object to that question, Your
22 Honor. It's hypothetical and ambiguous.

23 THE COURT: It is a hypothetical, but it doesn't make
24 it objectionable, and I don't think it was ambiguous.

25 MS. STOLL-DeBELL: You can go ahead and answer that.

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1 A No, it would not work the same.

2 Q And why would it not work the same?

3 A The purchase order module is expecting, when it's going to
4 order something from a vendor, to have the vendor name not in a
5 user-defined field but rather has to be inside of the vendor
6 name field.

7 Q So if you set up a user-defined field and you say that's
8 going to be vendor name, and I'm going to say this particular
9 item is from Staples, so I'm going to put that in my
10 user-defined field and then you run a search for an item and
11 put it into the shopping cart, will the system know that the
12 vendor is Staples and issue a purchase order to Staples?

13 A No.

14 Q Why not? Can you explain that to us so we understand why
15 that's not true?

16 A First of all, again --

17 THE COURT: I thought he already answered it. I
18 thought you said that the purchase order module doesn't --
19 won't take it, and therefore -- I mean doesn't recognize it
20 because it doesn't come from the vendor field that is vendor
21 name.

22 THE WITNESS: You are correct, Your Honor. That's
23 what I was going to say.

24 THE COURT: He's already answered.

25 MS. STOLL-DeBELL: I just thought it was a little

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1 confusing. I just wanted to make sure everyone understood his
2 answer.

3 THE COURT: I thought it was fairly clear, but it
4 bothers me if you thought it was confusing.

5 MS. STOLL-DeBELL: Now it's crystal clear.

6 THE COURT: All right. Let's go.

7 Q I'm going to change topics.

8 A Okay.

9 THE COURT: Is this a good time for a recess?

10 MS. STOLL-DeBELL: Sure.

11 THE COURT: We were in here earlier before you all
12 came in at 9:30. We were in here beginning earlier, so we're
13 going to take a morning recess of 20 minutes now. You just
14 take your pads with you. Thank you.

15

16 (Jury out.)

17

18 THE COURT: All right, we'll take a 20-minute recess.

19

20 (Recess taken.)

21

22

23

24

25